

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL D. EVANS,

Defendant-Appellant.

UNPUBLISHED

December 20, 2002

No. 235909

Wayne Circuit Court

LC No. 00-011288-01

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of assault with intent to commit great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to serve one and one-half to ten years in prison for the assault conviction, consecutive to a mandatory two-year term for the felony-firearm conviction. He appeals as of right, and we affirm.

On appeal, defendant argues that the prosecution failed to present sufficient evidence to support his convictions, and also failed to meet its burden to disprove self-defense beyond a reasonable doubt. Generally, the killing of another person in self-defense by one who is free from fault is justifiable homicide if, under all the circumstances, he honestly and reasonably believed that he was in imminent danger of death or great bodily harm and that it was necessary for him to exercise deadly force. *People v Riddle*, 467 Mich 116, 119; 649 NW2d 30 (2002). The necessity element of self-defense generally requires the actor to avoid the use of deadly force if he can safely and reasonably do so, such as by applying non-deadly force or by using an obvious and safe avenue of retreat. However, a person is not required to retreat from an attacker who he reasonably believes is about to use a deadly weapon. *Id.* Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt. *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Here, defendant contends that the trial court, sitting as trier of fact, improperly based its finding of guilt solely on the testimony of Charles Coleman and Lois Leonard, which conflicted with defendant's version of events and which was uncorroborated by direct, physical evidence. We find the argument to be without merit. First, where contradictory testimony is presented, it is the duty of the trier of fact to resolve issues of credibility. Here, the trial court found Coleman and Leonard to be credible, and defendant not to be credible. See *People v Elkhoya*, 251 Mich App 417, 442; 651 NW2d 408 (2002). Second, although defendant correctly states the legal rule

that a person is under no duty to retreat inside his home and its attached appurtenances, including a porch, if he honestly and reasonably believes that he is in imminent danger of death or great bodily harm, *Riddle, supra*; *People v Canales*, 243 Mich App 571, 575; 624 NW2d 439 (2000), defendant's testimony that Coleman came toward him on his porch and pulled a gun was not believed by the trial court. Both Coleman and Leonard testified that they were unarmed and that defendant pursued Coleman into the street and shot him at point-blank range. A neighbor testified to seeing Coleman fall to the ground at the end of Leonard's driveway, and defendant immediately speeding away in his car. Thus, sufficient evidence was presented to negate self-defense beyond a reasonable doubt. Third, defendant's challenge to the alleged lack of direct, physical evidence is specious. Such evidence is not necessary to convict of these offenses, and the alleged lack of such evidence in this case does nothing to undermine defendant's convictions.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh